IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10388 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARESHBHAI BABUBHAI DUDHWALA (DUMASIA)

Versus

VINITKUMAR GUPTA

Appearance:

MR HORMAZ B SHETHNA for the Petitioner.

Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,

for Respondent Nos. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/03/2003

ORAL JUDGEMENT

The petitioner has challenged his detention order dated 31.8.2002, by which he is detained under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short), detaining him

as a 'bootlegger'. Along with the detention order, he is served with the grounds of detention of the same day. In the grounds of detention, there is a reference about a criminal case, which is registered against the petitioner on 3.6.2002. The aforesaid case is registered against the petitioner under the Bombay Prohibition Act. After considering the material on record, the Detaining Authority has detained him.

Mr.Shethna for the petitioner submitted that practically, the authority waited for about three months for passing the detention order after registering case against the petitioner. It is not in dispute that the only solitary case registered against the petitioner is dated 3.6.2002 and the order is passed on 31.8.2002. The learned Advocate for the petitioner has relied on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
>
> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC

61.

... ..."

Mr.Patel, learned AGP, however, submitted that statements of witnesses were recorded later on. However, when the Authority noticed the activity of the petitioner, in view of the alleged incident of 3.6.2002, there is a considerable delay in passing the detention order. Considering the above judgment of this Court, on the ground of delay, order of detention is required to be set aside, and, accordingly, it is not necessary to consider the other points canvassed by Mr.Shethna.

Considering the aforesaid aspect, the petition is accordingly allowed on the first point canvassed by the learned Advocate for the petitioner. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

28th March, 2003 (P.B. Majmudar, J.)

***

(apj)